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5. Homicide (§ 301*)—Where Self-Defense Only Was Claimed Instructions on Defense of Sister Properly Refused.—Where accused expressly testified that he shot in self-defense, instructions as to his right to resist deceased's unlawful arrest of his sister, and deceased's failure to afford her opportunity to prepare bail, were properly refused, as inapplicable to any material issue.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 158, et seq.]

6. Criminal Law (§ 404 (4)*)—Clothing of Deceased Held Properly Admitted in Evidence.—In a murder trial where self-defense was claimed, deceased's clothing, showing the position of bullet holes and of the hip pocket, was properly admitted as bearing on whether the position of accused was, at the time of the killing, such that he could have seen, as claimed, "the bright metal looking like a pistol," with the right hand of deceased on it in his hip pocket.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 146.]

7. Homicide (§ 253 (1)*)—Evidence Held Sufficient to Show First Degree Murder.—In view of Code 1910, § 6363, evidence held to support conviction of murder in the first degree.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 147 et seq.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Wise County.

John Graham was convicted of murder, and brings error. Affirmed.

D. F. Kennedy, of Youngstown, Ohio, for plaintiff in error.

Jno. R. Saunders, Atty.-Gen., and *J. D. Hanks, Jr., Asst. Atty.-Gen.*, for the Commonwealth.

TURNER *v.* MONTEIRO et al.

June 10, 1920.

[103 S. E. 572.]

Wills (§§ 607 (1), 608 (3)*)—Devise to Two Sons and "Descendants" Held to Create Joint Fee under Rule in Shelley's Case; "Heirs of the Body;" "Issue."—Will executed in 1846, devising land to two named sons "during their lifetime * * * to hold it jointly and after the death of the last of the two to their descendants, if they have any, if not" to another son or his descendants "without restriction," held to give the first-named sons, by operation of the rule in Shelley's Case, an estate tail, which was converted by the statute into a fee simple, so that each son took a joint fee in the land devised; the

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words "descendants" and "heirs of the body" being of equivalent meaning, and a "descendant" being an individual proceeding from an ancestor in any degree, synonymous with "issue," and meaning offspring, near or remote.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Descendant; Heirs of the Body; Issue.]

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 294, 301, et seq.]

Appeal from Circuit Court, Goochland County.

Suit by Charles F. Monteiro against Mollie A. Turner and others. From decree for complainant, the named defendant appeals. Reversed and rendered.

S. A. Anderson and *David Meade White*, both of Richmond, for appellant.

Lassiter & Drewry, of Petersburg for appellees.

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CROWDER v. VIRGINIA BANK OF COMMERCE; Inc.

June 10, 1920.

[103 S. E. 578.]

1. Landlord and Tenant (§ 90 (3)*)—Lease for Two Years, Held, in View of Privileges Thereby Given, Renewed for Two Years by Holding Over and Paying Increased Rent.—Where at end of the two-year term of a lease, giving privilege to lessee of renting for two additional years, and privilege to lessor of advancing rent \$5 per month, the lessee continue to occupy, paying \$5 per month additional, without anything being said, he did not become a tenant from year to year, or lessee for a year, but lease was renewed for two years; the privilege not including an option to rent for a year.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 167.]

2. Landlord and Tenant (§ 49 (3)*)—On Abandonment Lessor May Refuse Possession and Hold Tenant Liable.—On wrongful abandonment by lessee, lessor need not retake and find a new tenant, but may refuse possession, and hold the lessee under the contract.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 165.]

Error to Circuit Court, Lunenburg County.

Motion in the nature of an action in assumpsit by J. N. Crowder against the Virginian Bank of Commerce, Incorporated, to recover an amount alleged to be due for rent. Judgment for defendant, and plaintiff brings error. Reversed and rendered.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.